

Message Text

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ACTION STR-07

INFO OCT-01 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10
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DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15
JUSE-00 XMB-02 OPIC-03 STRE-00 /173 W
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P 181453Z JUL 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 2226
INFO AMEMBASSY OTTAWA

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C O R R E C T E D C O P Y (TEXT PARA 1)

USMTN

ACTION STR

PASS AGRICULTURE

STR PASS CODEL

E.O. 11652
TAGS: ETRD, MTN
SUBJECT: DISCUSSION ON CANADIAN HORTICULTURAL PROPOSAL,
JULY 13, 1978

REF: GENEVA 10212

1. U.S. MTN DEL (HARTZELL, HAMERSCHLAG, KOENIG, ET AL.)
AND WASHINGTON VISITORS (STARKEY, MATTHEISEN, SINDELAR,
ET AL.) MET WITH CANADIAN DEL (AMB. GREY, GIFFORD, WEEKES,
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ET AL.) AND OTTAWA VISITORS (TRANT, JOYCE, LOOMER, ET AL.)
JULY 13 TO CONSIDER REVISED TEXT OF CANADIAN PROTOCOL FOR
HANDLING SHORT TERM SAFEGUARD ACTIONS ON HORTICULTURAL
PRODUCTS. HARTZELL INFORMED GREY THAT WASHINGTON WAS
"FLABBERGASTED" BY PROPOSAL WHICH IT SEES AS COMPLETELY
UNACCEPTABLE--A POINT REITERATED LATER BY STARKEY, WHO
NOTED THAT REVISED OTTAWA-CLEARED TEXT EVEN MORE EXTREME

THAN INITIAL UNCLEARED GENEVA DRAFT. GREY RETORTED THAT SATISFACTORY SOLUTION TO THIS ISSUE WAS "POLITICAL IMPERATIVE" FOR CANADA AND REPEATED WARNING (REFTEL) THAT CANADIAN PARTICIPATION IN MTN SAFEGUARDS AGREEMENT MIGHT DEPEND ON SUCCESSFUL RESOLUTION OF THIS QUESTION.

COMMENT: ALTHOUGH GREY PRESSED THIS "LINKAGE" THROUGHOUT MEETING HE STOPPED JUST SHORT OF CASTING PROTOCOL AS SINE QUA NON FOR JOINING CODE. END COMMENT.

2. GREY NOTED CANADA IS NOT RPT NOT PREPARED TO DEAL WITH THIS PROBLEM VIA 'SIDE LETTER' APPROACH BUT NEEDS LEGAL BASIS FOR DEMONSTRATING IT NOT IN BREACH OF ARTICLE XIX OR PROSPECTIVE SAFEGUARDS CODE, WHEN (AS IS TYPICAL IN HORTICULTURE CASE) SAFEGUARD ACTION NECESSARY BEFORE IMPORTS HAVE ACTUALLY INCREASED.

3. GREY STRESSED THAT HE WAS SOFTENING OTTAWA TEXT IN SEVERAL PLACES, USING "SHOULD" IN PLACE OF "WOULD" OR "SHALL" TO LOOSEN AUTOMATICITY OF CANADIAN ACTION UNDER PROPOSED PROTOCOL. WE SAID ONE TROUBLESOME FEATURE OF PROPOSAL IS RELIANCE ON ONCE-AND-FOR-ALL TARIFF BOARD STUDY AS A CONTINUING BASIS FOR ACTION INSTEAD OF INVESTIGATION ON A CASE-BY-CASE BASIS. THIS TOGETHER WITH PRESUMPTION OF INJURY WHENEVER IMPORT PRICE TRENDS CROSSED CERTAIN THRESHOLD REMOVED MUCH OF THE DISCRETION-ARY JUDGMENT AND FULL EVALUATION WHICH OUGHT TO FIGURE IN ANY SAFEGUARD ACTION.

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4. GREY RESPONDED CANADA HAD NO FLEXIBILITY ON THIS POINT, COULDN'T ACCEPT FORMAL RE-EXAMINATIONS PRIOR TO EACH ACTION, AND ADDED THAT CONSULTATIVE PROVISIONS IN PROPOSAL WOULD PROVIDE SUFFICIENT OPPORTUNITY FOR SUPPLIERS TO MAKE THEIR CASE. U.S. NOTED BENEFITS OF IMPROVED CONSULTATION PROVISIONS AND SUGGESTED THIS SHOULD BE CENTERPIECE OF ANY CANADIAN INITIATIVE.

5. MEETING CLOSED WITH GREY RE-EMPHASIZING IMPORTANCE OF PROPOSAL TO CANADA AND LINKAGE TO SAFEGUARDS CODE, AND URGED U.S. TO GIVE CLOSE CONSIDERATION TO NEW TEXT. WE AGREED TO CONTINUE DISCUSSION OF THE MATTER.

6. REVISED TEXT FOLLOWS:

- BEGIN QUOTE PROTOCOL

THE SIGNATORIES TO THIS AGREEMENT NOTE THAT FROM TIME TO TIME THERE HAVE ARISEN SITUATIONS IN WHICH SERIOUS INJURY IN THE SENSE OF ARTICLE XIX HAS BEEN CAUSED OR THREATENED TO CANADIAN PRODUCERS OF CERTAIN

FRESH AND SEMI-PROCESSED FRUITS AND VEGETABLES BY IMPORTS,
OR THE THREAT OF IMPORTS, AT UNUSUALLY LOW PRICES. THE
SIGNATORIES ARE AWARE THAT IN CERTAIN OF THESE SITUATIONS
THE CANADIAN AUTHORITIES HAVE APPLIED TEMPORARY MEASURES
UNDER ARTICLE XIX TO PREVENT SUCH SERIOUS INJURY TO THEIR
PRODUCERS. THE SIGNATORIES RECOGNIZE THAT IN THESE
SITUATIONS THE CRITERIA FOR TAKING THE ACTION PROVIDED
FOR IN PARAGRAPH ONE OF ARTICLE XIX MAY HAVE BEEN MET
EXCEPT THAT THERE HAVE BEEN NO "INCREASED IMPORTS" IN
THE SENSE OF THAT ARTICLE; IT HAS BEEN DEMONSTRATED,
HOWEVER, THAT THERE WOULD BE SHARPLY INCREASED IMPORTS
AT UNUSUALLY LOW PRICES UNLESS CANADIAN PRODUCERS LOWERED
THEIR PRICES TO MATCH THE UNUSUALLY LOW PRICES OF PO-
TENTIAL IMPORTS.
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ACCORDINGLY IT IS AGREED THAT WITH RESPECT TO

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(LIST OF PRODUCTS) THIS AGREEMENT WILL APPLY SUBJECT TO THE FOLLOWING ADDITIONAL PROVISIONS:

A) IF CANADA TAKES ACTION UNDER THIS AGREEMENT FOR ONE OR MORE OF THE PRODUCTS REFERRED TO IN THIS PROTOCOL WHEN NO INCREASE IN IMPORTS HAS YET OCCURRED BUT IT CAN BE DEMONSTRATED THAT POTENTIAL IMPORTS ARE AVAILABLE IN INCREASED QUANTITIES AND AT UNUSUALLY LOW PRICES, AND THE OTHER CRITERIA REFERRED TO IN PARAGRAPH ONE OF ARTICLE XIX HAVE BEEN FOUND TO HAVE BEEN MET, THEN CANADA WILL BE DEEMED TO HAVE MET THE REQUIREMENTS OF THIS AGREEMENT FOR TAKING ACTION UNDER XIX.

B) BECAUSE OF THE SPECIAL CHARACTERISTICS OF THE TRADE IN THESE PRODUCTS IT IS OFTEN NECESSARY TO LIMITED OFFICIAL USE

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ACT QUICKLY TO PREVENT SERIOUS INJURY.

C) THE CANADIAN OBLIGATIONS UNDER THIS AGREEMENT REGARDING DOMESTIC PROCEDURES ARE DEEMED TO HAVE BEEN FULFILLED BY THE INQUIRY OF THE TARIFF BOARD OF CANADA REPORTED IN REFERENCE NO. 152.

D) THE SIGNATORIES TAKE NOTE OF THE STATEMENT OF THE CANADIAN AUTHORITIES THAT, IN THE LIGHT OF THIS TARIFF BOARD REPORT, THERE IS A PRESUMPTION THAT WHEN THE FOB IMPORT PRICE OF ANY OF THESE PRODUCTS FALLS BELOW X PER CENT OF THE AVERAGE VALUE FOR CUSTOMS DUTY DURING ANY MONTH OF THE NORMAL MARKETING SEASON FOR ANY OF THESE PRODUCTS IN THE PRECEDING THREE YEARS, SERIOUS INJURY TO CANADIAN PRODUCERS WOULD RESULT IF SIGNIFICANT QUANTITIES OF SUCH A PRODUCT WERE IMPORTED AT SUCH PRICES.

IT IS THE VIEW OF THE CANADIAN AUTHORITIES THAT IT WOULD BE APPROPRIATE TO APPLY, IN SUCH SITUATIONS, A SURTAX ON SUCH IMPORTS TO RAISE THEIR PRICE TO THAT LEVEL. THE SIGNATORIES AGREE THAT GIVEN THE EXAMINATION OF THIS MATTER BY THE TARIFF BOARD, AND GIVEN THAT THE USE OF A SURTAX ON IMPORTS HAS THE EFFECT OF RAISING RETURNS TO EXPORTERS, SUCH A MEASURE BY THE CANADIAN AUTHORITIES SHOULD NOT BE PRESUMED TO CAUSE DAMAGE TO THE TRADE INTERESTS OF THE EXPORTING COUNTRY, UNLESS THE EXPORTING COUNTRY CAN DEMONSTRATE TO THE CONTRARY, AND THAT IT SHOULD NOT BE DEEMED TO BE EXCESSIVE IN RELATION TO THE SERIOUS INJURY THREATENED.

E) THE CANADIAN AUTHORITIES UNDERTAKE TO NOTIFY
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THE CONTRACTING PARTIES OF THE AVERAGE VALUES FOR
DUTY TO BE USED UNDER THE PREVIOUS PARAGRAPH (X)
DAYS PRIOR TO THE NORMAL MARKETING SEASON FOR EACH
PRODUCT; TO CONSIDER REPRESENTATIONS FROM IMPORTERS,
GOVERNMENTS OF SUPPLYING COUNTRIES AND OTHER INTER-
ESTED PARTIES DURING THE (X) DAY PERIOD ON THE
QUESTION OF WHETHER THE PRESUMPTION OF SERIOUS
INJURY WOULD BE JUSTIFIED; AND TO WAIVE APPLICATION
OF SURTAX FOR ANY PRODUCT WHERE IT IS AGREED
BETWEEN THE SIGNATORIES CONCERNED THAT IMPORTS AT
PRICES LOWER THAN X PER CENT OF THREE-YEAR AVERAGE
VALUE FOR DUTY WOULD NOT CAUSE OR THREATEN SERIOUS
INJURY. END QUOTE

7. NOTE: CANADIAN DEL ADVISES THAT CHANGES HAVE BEEN
MADE IN POINTS B AND D ADDITIONAL TO THOSE PRESENTED ON
13 JULY.

8. DRAFTED BY ADDUCI/HARTZELL CULBERT

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